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SUPREME COURT, U.S.
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No. 95-1212 JAN 24 1996

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

ALEX WAYNE BOLT,
Petitioner,

vs.

COURT OF APPEALS FOR THE NINTH CIRCUIT
and
STATE FARM FIRE AND CASUALTY COMPANY,
Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals, Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

ALEX WAYNE BOLT
1317 W. Northern Lights
Suite 100
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Petitioner

January 23, 1996

90 pp

QUESTIONS PRESENTED

1. Whether the Ninth Circuit Court of Appeals was arbitrary, capricious, and unreasonable in dismissing petitioner's appeal?

2. Whether petitioner's constitutional due process, equal access, and equal protection rights were violated by the Ninth Circuit's "dismissal" of petitioner's appeal while petitioner's motion for enlargement of time was pending, which sought a stay in the appellate court until after petitioner's bankruptcy case was finally adjudicated?

3. Whether the Ninth Circuit's dismissal order must be vacated and petitioner's right to appeal be granted?

4. Whether a non-existent plaintiff can effectively initiate an action in U.S. District Court and whether jurisdiction can be triggered in U.S. District Court by a non-existent plaintiff?

5. Whether the U.S. District Court erred in granting summary judgment to a non-existent alleged plaintiff?

6. Whether State Farm Fire and Casualty Company (the existent insurer) was estopped from denying coverage in the underlying and ongoing litigation against petitioner?

7. Whether the U.S. District Court lacked jurisdiction and erred in assuming discretionary jurisdiction?

8. Whether the U.S. District Court erred by not entering a stay in the declaratory judgment proceedings, once debtor-petitioner filed a chapter 11 petition and filed formal notice with the U.S. District Court?

9. Whether federal district courts have jurisdiction to determine insurers duties to defend or indemnify with respect to insurance controversies that are or will be the subject of state court litigation?

10. Whether orders and judgments entered in violation of the automatic stay provision under 11 U.S.C. § 362(a) are void or voidable?

11. Whether insured-petitioner is entitled to contemporaneous payment of defense costs, fees, and expenses by his insurer in answering and defending declaratory judgment actions "at the request" of his insurer?

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Constitutional and Statutory Provisions

The Constitution of the United States provides in pertinent part:

ARTICLE V

> No person shall be held to answer for a capital, or otherwise infamous crime, except on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual services in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law;

nor shall private property be taken for public use, without just compensation.

ARTICLE XIV, SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

McCarran-Ferguson Insurance Regulation Act
15 U.S.C. § 1012(a)

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such businesses.

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Petition For Writ Of Certiorari To The United States Court Of Appeals, Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Alex Wayne Bolt respectfully prays that a writ of certiorari issue to review the order of dismissal by the United States Court of Appeals for the Ninth Circuit of petitioner's timely filed notice and supplemental notices of appeal on orders and judgments of the United States District Court, District of Alaska, and to order reinstatement of the appeals in the case below.

ORDERS AND DECISIONS BELOW

The United States Court of Appeals for the Ninth Circuit entered an "order" dated September 21, 1995, App.A1, dismissing appeal no. 95-35296 and entered and "order" dated October 26, 1995, which construed petitioner's September 20, 1995, motion for enlargement of time, App. A2, as a motion for reinstatement and denied petitioner's motion resulting in dismissal of petitioner's appeal no. 95-35296. App. A5. This petition has a direct relationship with petitioner's petition for writ of certiorari placed on the docket as no. 95-1120 on January 16, 1996.

JURISDICTION

The appeal was initially filed on March 27, 1995, on the district court's order of February 28, 1995, in case no. A91-478, which denied a motion for injunctive relief under 28 U.S.C. § 1292(a). The district court, by order of April 13, 1995, consolidated a separate injunctive complaint (case no. A95-130) into case A91-478. Subsequently, on May 23, 1995, the district court ordered dismissal of case no. A95-130, and issued a final judgment, filed on May 23, 1995, which triggered the second supplemental appeal notice to be filed on June 21, 1995. App. A6. A separate appeal, no. 9CCA 95-80053, in case A91-478 remains pending under a petition for writ of certiorari in this court and docketed under no. 95-1120. The jurisdiction of this court is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The initial case below (A91-478) arose out of an alleged declaratory judgment action filed by a non-existent plaintiff referred to as "State Farm Insurance Company, an Illinois corporation" ("Plaintiff"). The non-existent plaintiff's complaint alleged diversity of citizenship jurisdiction under federal statute 28 U.S.C. § 2201 and claimed the amount to exceed $50,000. Petitioner filed multiple motions to dismiss for lack of jurisdiction early in the litigation, which were ignored by the court. Summary judgment of no coverage to insured defendants was granted to non-existent plaintiff on March 22, 1993, by the U.S. District Court. After summary judgment was granted, petitioner filed multiple motions to vacate and dismiss for lack of jurisdiction which were denied. App. A18.

Defendant (petitioner) Bolt filed a chapter 11 petition in bankruptcy on August 25, 1993, and filed formal notice to the district court on August 27, 1993. App. A19. The district court litigation was not stayed in accordance with the law, but, instead, was allowed to accelerate against defendants-petitioners.

After petitioner bolt filed his chapter 11 petition, and prior to seeking any relief from stay, by order filed October 1, 1993, the district court substituted non-existent plaintiff to "State Farm Fire and Casualty Company" and fined defendants $10,000 for not producing tens of thousands of discovery documents although all defendants and petitioner remained protected by the automatic stay. The district court, Judge Singleton, recognized the bankrupt status of petitioner, but ordered that it did not apply. App. A22.

Final judgment dismissing defendants' counterclaims was entered in favor of State Farm Fire and Casualty Company on December 21, 1993. App. A29. No relief from stay from the U.S. Bankruptcy Court had been sought or obtained. Defendants filed motions for re-hearing and vacating or amending judgment which were denied post final judgment. App. A31. Substituted plaintiff, State Farm Fire and Casualty Company, filed motions for attorney fees which were initially denied by the district court, without prejudice for State Farm Fire and Casualty Company to renew after they received relief from stay from the bankruptcy court.

Substituted plaintiff State Farm Fire and Casualty Company obtained a statutorily defective "*ex parte* relief from stay order" that was obtained without notice or hearing on March 2, 1994, and renewed its motion for attorneys' fees in district court. On April 20, 1994, the December 21, 1993, final judgment was amended which awarded substituted plaintiff $99,514 attorney's fees. App. A35.

Defendants filed post-amended final judgment motions that were received by the district court but ordered returned to defendants without consideration. The district court ordered defendants not to file further pleadings, and the court ordered the clerk not to accept further pleadings by petitioner for himself or on behalf of other defendants. App. A37.

Defendants' post-judgment motions remained pending which precluded any effective notices of appeal. Six timely post-judgment motions remain pending and un-ruled on even today. Further, defendants were denied any access to the court after Judge Singleton ordered the clerk not to accept any more pleadings from defendants/petitioners. App. A39.

Defendant Bolt, and arguably all other "related to" defendants, were protected by the automatic stay when the December 21, 1993, final judgment was entered. The district court made no certification under Fed.R.Civ.P. 54(b) to allow appeals by any defendant.

In October 1994, substituted plaintiff initiated judgment debtor hearings and obtained restraining orders over all defendants' assets to cover State Farm Fire and Casualty Company's award of full attorney's fees. Defendants opposed and filed for injunctive relief. The district court refused to hear defendants' motion for injunctive relief and ordered the arrest of petitioner. Petitioner filed a notice of appeal of the arrest order before his arrest. Notwithstanding, petitioner was falsely arrested and confined out of a motion by substituted plaintiff, and by the extreme bias and prejudice of Judge Singleton and Magistrate Branson, who had no jurisdiction in the case from the outset, as had been argued in petitioner's motion for injunctive relief. After release from jail and confinement, judgment-debtor proceedings accelerated under the express orders of Magistrate Branson. Judge Singleton finally issued an order which treated defendants' motion for injunctive relief as a motion for reconsideration of the entire case in which he had previously entered final judgment and an amended final judgment. App. A41.

The district court would not accept the notices of appeal filed by other defendants which deprived defendants of access and equal protection of the law. App. A47. The district court, without jurisdiction, continues at this time to proceed in the judicially infirm judgment-debtor hearings against all defendants. This appeal was filed under the district court's

refusal to hear defendants' motion for injunctive relief filed on January 23, 1995.

Because the judgment-debtor proceedings were accelerating, petitioner filed a complaint for injunctive and declaratory relief in a separate case, no. A95-130, which was summarily consolidated into case A91-478 by Judge Singleton. App. A7. Judge singleton refused recusal, denied a demand for jury trial, and ordered defendant Bolt to show cause why he should not be fined for filing the new complaint. Judge Singleton summarily rejected defendants' show cause pleading, fined Bolt $2,500 with a threat of jail again if the fine was not paid by June 5, 1995. Further, although Judge Singleton had previously consolidated A95-130 into A91-478, which was on appeal under 28 U.S C. § 1292(a), Judge Singleton immediately dismissed case A95-130 (the injunctive relief complaint) with prejudice. That dismissal order was appealed under 9CCA-95-80053 and has now been docketed in this court as Supreme Court of the United States no. 95-1120. The Ninth Circuit court denied defendant Bolt its right to appeal by the dismissal order filed August 7, 1995, now pending on a petition for writ of certiorari under no. 95-1120. While petitioner's appeal (no. 9CCA 95-35296) was pending before the 9th Circuit, petitioner filed a motion for enlargement of time to prosecute the appeal until 30 days subsequent to the final disposition of petitioner's bankruptcy case. Petitioner's motion was received on September 20, 1995. On September 21, 1995, the Ninth Circuit dismissed appeal 95-35296. Petitioner filed to reinstate the appeal which was denied on October 26, 1995. This petition for writ of certiorari timely follows.

Meanwhile, the district court has frozen all petitioner's assets by issuing a restraining order on motion by State Farm Fire and Casualty Company to sell and satisfy their void award of attorney's fees by the district court's "amended judgment."

REASONS FOR GRANTING THIS PETITION

By order filed October 26, 1995, the Ninth Circuit refused to reinstate petitioner's appeal which had been arbitrarily and capriciously dismissed while petitioner's motion for enlargement of time was pending. The dismissal of petitioners' appeal by the Ninth Circuit was a conscious and intentional act to deprive petitioner of his constitutional due process of law, equal access, and equal protection, in conflict with well settled law, and substantially departs from the accepted and usual course of judicial proceedings and requires a writ of this court calling for an exercise of this court's power of supervision and vacation of the Ninth Circuit dismissal order and an order allowing petitioners to prosecute their appeals in this matter.

The Ninth Circuit dismissal order of September 21, 1995, denied petitioners appellate rights of meritorious claims and issues then pending on appeal. Dismissal of this second related appeal was intended to frustrate petitioner's appellate rights. Such denial of petitioners' appeal rights is unjust, unfair, and unconstitutional and must be vacated. Petitioners request a summary disposition and order to vacate the Ninth Circuit's October 26, 1995, dismissal order and permit petitioners to prosecute their appeal on the merits of the issues included but not limited to those summarized below. Petitioner

remain in chapter 11 and remain protected by the automatic stay provisions of 11 U.S.C. § 362(a) at this time.

I. The Ninth Circuit was arbitrary, capricious, and unreasonable in dismissing petitioner's appeal before the merits of the appeal were considered.

There is no adequate record in the Ninth Circuit, other than the notices of appeal and accompanying orders and judgments, on which the Ninth Circuit could have made their determination to dismiss the appeal. Such dismissal is believed to have occurred in behind-the-scene maneuvering by and between the district court and the Ninth Circuit to deny petitioner — a *pro se* litigant out of necessity and not by choice — his day in court. The Ninth Circuit's arbitrary dismissal violates petitioners constitutional due process of law rights, equal access, and equal protection. Petitioner has the right, as an aggrieved person, to appeal and seek redress. Dismissal of petitioner's appeal violates Article V and Article XIV, Section I of the United States Constitution, and affirms the U.S. District Court's malicious acts, and affirms judicial activism in violation of law, and upholds orders and judgments entered without jurisdiction. Insurance policy property rights have been improperly taken by the district court, which had no jurisdiction and without due process, which by the Ninth Circuit dismissal order denies petitioner the right to appeal. The Ninth Circuit's dismissal order also violates procedural rules which "must satisfy contemporary notions of due process." Burnham v. Superior Court of Cal., 495 U.S. 604, 630 (1990). The Ninth Circuit's dismissal order is so

"fundamentally unfair" as to deny due process of law and to deny petitioner access to the appellate courts.

The Ninth Circuit's dismissal order is harsh, unwise and punitive, and unsupportable. "Both liberty and property are specifically protected by the fourteenth amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by the simple label a state chooses to fasten upon its conduct on its statutes. Giaccio v. Pennsylvania, 382 U.S. 399, 402 (1966). The Ninth Circuit summarily dismissed petitioner's appeal without discussion, show cause pleadings, or appellate briefs, which has denied "fundamental justice" to petitioner. The concept of "fundamental justice" entered the due process lexicon not as a description of what due process entails in general, but as a description of what it entails when traditional procedures are dispensed with. As the Court reiterated in Twining v. New Jersey, 211 U.S. 78 (1908),

> "[C]onsistently with the requirements of due process, no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained form time to time by judicial action, which have relation to process of law and protect the citizen in his private right, and guard him against the arbitrary action of government."

See Pacific Mutual Life Inc. v. Haslip, 499 U.S. 1, 33. The due process guarantee "includes the right to be heard where liberty or property is at stake in judicial proceedings. Ownby v. Morgan, 256 U.S. 94, 111 (1921). The dismissal order

should be vacated and petitioner should be allowed to proceed with his appeals before the Ninth Circuit.

II. **Petitioner has meritorious issues to appeal.**

Petitioner has meritorious issues on appeal which should be freely heard. Some of petitioner's issues on appeal are identified below, which clearly demonstrate an equitable and legal basis to prevail on appeal. Most issues on appeal would be decided as a matter of law, legal precident, and equity. This court should order the Ninth Circuit to allow petitioner to prosecute his appeals. Questions Presented on Meritorious Issues include but are not limited to the following arguments.

a. **Whether a non-existent plaintiff can effectively initiate an action in U.S. District Court and whether jurisdiction can be triggered by a non-existent plaintiff?**

Diversity jurisdiction requires that the action be between "citizens." The declaratory judgment case below was filed by an alleged, but non-existent plaintiff called "State Farm Insurance Company, an Illinois corporation," "plaintiff". The real and existing insurer is "State Farm Fire and Casualty Company", which was allowed to be "substituted" in the case as plaintiff. Non-existent entities are not "citizens." Non-existent entities do not have a state of incorporation or principal place of business and do not have standing to initiate lawsuits in any court. With respect to federal diversity jurisdiction, diversity of citizenship must exist at the time the action is commenced. Newman-Green, Inc. v. Alfonzo-Larrain, 109 S.Ct. 228, 222, 104 L.Ed.2d 893, reh'g denied, 110 S.Ct. 12, 106 L.Ed.2d 627 (1989); Navarro Sav. Ass'n v. Lee, 446 U.S.

458, 549 n.1, 100 S.Ct. 1779, 1781 n.1, 64 L.Ed.23 425, 428 n.1 (1980). Under Fed.R.Civ.P. 3, the action is commenced when the complaint is filed. Accordingly, diversity must exist when the complaint is filed. Faysound Ltd. v. United Coconut Chemicals, Inc., 878 F.2d 290 (9th Cir. 1989); Co-Efficient Energy Systems v. C.S.L. Industries, Inc., 812 F.2d 556 (9th Cir. 1987).

The alleged "plaintiff" filed the initial complaint, amended complaints, and over fifty of the initial pleadings as "State Farm Insurance Company, an Illinois corporation, Plaintiff." Such identified party was non-existent, did not have any existence in the state of Illinois or Alaska, and, therefore, was not licensed to conduct business or initiate litigation in either state.

The United States Supreme Court held in Woods v. Interstate Realty Company, 337 U.S. 535, 69 S.Ct. 1235, 93 L.Ed. 1524 (1949), that the doctrine of Erie Railroad Company v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), requires that where a plaintiff in federal court in a diversity case would be barred from bringing the action in state court, the federal court is likewise barred from hearing the case. In a diversity case, a plaintiff who could not sue in the state courts cannot sue in the federal court. Kinetic Concepts, Inc. v. Kinetic Concepts, Inc., 601 F.Supp. 496 (1985). Attorney error, negligence, or carelessness in naming a non-existent plaintiff cannot be overcome later by the non-existent party filing a motion to correct a moot complaint from the outset.

The Federal Rules thus make no provision for suits by persons using fictitious names or for anonymous plaintiffs.

Coe v. United States Dist. Court, 676 F.2d 411, 415 (10th Cir. 1982). Neither do the federal rules or law allow carelessness or negligence on the part of counsel to summarily "substitute" parties due to their initial errors.

In this instant case, because the alleged "plaintiff," State Farm Insurance Company, an alleged Illinois corporation was (1) a non-existent "citizen," "person," or "entity"; (2) was not licensed to do business in Alaska; (3) could not bring an action in federal court because it was not qualified to bring an action in Alaska state court; (4) is not and was not at any time a corporation in the state of Illinois; (5) is not nor was ever registered with the Illinois division of insurance; (6) had no standing to invoke jurisdiction which is a "threshold inquiry", the lower court had no jurisdiction and alleged "plaintiff" did not have standing and could not possibly invoke jurisdiction, making all aspects of this case void, moot, and without effect from the outset. State Farm Fire and Casualty Company — the substituted "plaintiff," which was substituted into the case as "plaintiff" after summary judgment was granted to non-existent "plaintiff" — had no standing to move to be substituted into the case, having not been joined or been named as an indispensable party plaintiff. A non-existent party plaintiff has no standing to file a complaint and could not move the court for substitution of a "new" plaintiff. Lack of standing is a proper basis to dismiss the complaint without considering any other factor. See Brown v. Sibley, 650 F.2d 760, 771 (5th Cir. 1981). The non-existent "plaintiff" defeats justiciability since there is no case or controversy, hence no valid lawsuit may be brought. See McAffer v. Boston & Maine Railroad,

197 N.E. 328. No jurisdiction could arise in the district court by moot actions filed by an alleged non-existent plaintiff.

b. **Whether the U.S. District Court erred in granting summary judgment to a non-existent plaintiff when genuine issues of material fact existed and issues of waiver, estoppel, and bad faith were present?**

The standards for summary judgment are clear and well established in Fed.R.Civ.P. 56. Summary judgment should be granted when the record, taken as a whole, could not lead a rational trier of fact to find for non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2509, 91 L.Ed.2d 202 (1986); Matsushita Electric Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); McKee v. Cutter Laboratories, Inc., 866 F.2d 219, 220 (6th Cir. 1989). All inferences drawn from the facts must be viewed in a light most favorable to the non-moving party. Matsushita, 475 U.S. at 587, 106 S.Ct. at 1356; Roland v. Johnson, 856 F.2d 764, 769 (6th Cir. 1988).

The moving party bears the burden to conclusively demonstrate that no genuine issue of material fact exists and applicable law allows judgment in its favor. See Sauer v. The Home Indemnity Co., 841 P.2d 175 (Alaska 1992); Gudeneau v. Sweeny Ins. Co., 736 P.2d 763 (Alaska 1987); Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Bor., 527 P.2d 447, 450 (Alaska 1974).

Non-existent "plaintiff" filed the declaratory judgment action and moved immediately for summary judgment for an order denying coverage in all underlying litigation and in the declaratory judgment action. Defendants filed opposition and statements of genuine issues of material facts to non-existent

plaintiff's summary judgment motion. Defendants demonstrated that coverage clearly existed in all three underlying cases. Insured defendants clearly demonstrated factual issues, to include waiver and estoppel issues, bad faith issues, and other substantive and legal evidence to defeat non-existent plaintiff's motion for summary judgment on coverage issues to which Judge Singleton acknowledged but ignored. App. A21. Judge Singleton, likewise, acknowledged the name of plaintiff was non-existent but still allowed substitution of plaintiff after he had granted summary judgment in favor of the non-existent plaintiff. App. A21.

Opposition and genuine issues of material facts filed by insureds should have indisputably defeated summary judgment. The district court's grant of summary judgment on coverage, as requested by the non-existent plaintiff, must be reversed, dismissed as moot, and appellants granted a fair trial by jury on all issues in controversy and to recover costs, fees, and damages proximately caused by such clear judicial error, and judicial bias and prejudice demonstrated against insured defendants in this case.

State Farm Fire and Casualty Company accepted tenders and defended the Spokane litigation for 18 months and kept insured defendants-appellants in a tenuous position as to payment of newly selected "independent counsel" for another 5 months until summary judgment in the declaratory judgment action was granted on March 20, 1993, to the non-existent plaintiff. Plaintiff's attorneys relied on evidence in the declaratory judgment action which they obtained from their lawyers during its representation of petitioner in "Spokane." Such acts unequivocally constitute bad faith. Such acts and the

total control over insured defendants-petitioners' defense for a total of 23 months, which included the filing of an appeal by State Farm Fire and Casualty's appointed counsel in "Spokane" (who later acknowledged a conflict of interest between their "client", the insured, and their "employer", State Farm Fire and Casualty Company) constituted waiver and estoppel to deny coverage. Such waiver and estoppel not only raised genuine issues of material facts, but prevented State Farm Fire and Casualty Company from denying coverage. Extensive arguments on waiver and estoppel were argued which supported denial of the summary judgment order.

Once an insurer takes over control by appointed counsel, and defends insureds for an extended period of time, the insurer is estopped from denying coverage, regardless of policy language and questions of coverage. See Transamerican Is. v. Chubb & Jon, 554 P.2d 1080 (Wash. 1976).

State Farm Fire and Casualty's appointed counsel ultimately withdrew on October 30, 1992, due to conflicts of interest between its "client", petitioner Bolt, and its "employer", State Farm Fire and Casualty Company. State Farm Fire and Casualty Company , as petitioner's true insurer was estopped from denying defense and indemnity coverage in the "Spokane" case.

State Farm Fire and Casualty Company was estopped from denying indemnification coverage to defendants in the "Borbe" litigation. State Farm Fire and Casualty Company was estopped, as a matter of law, from denying indemnification coverage in "Borbe." Upon insureds' tender, State Farm Fire and Casualty Company, through its appointed defense counsel, Mullin Cronin & Blair, while defending "Spokane,"

investigated the Borbe court file in May, 1991, and had access to and used the "Borbe" court file while attempting to vacate the Spokane "void" judgment between May 1991, until October 1991.

Insured defendants first tendered "Borbe" by letter dated 4-5-91. Not receiving a response, insureds again tendered the "Borbe" litigation on 8-5-91. State Farm Fire and Casualty Company did not respond to the "Borbe" tender until 15 months later. While plaintiff included "Borbe" in its moot declaratory judgment action, State Farm Fire and Casualty Company denied coverage of "Borbe" by letter dated 8-26-92, 15 months subsequent to tender, which stated "there is no coverage for the various defendants in the Borbe case...". Not only did State Farm Fire and Casualty Company breach its duty to defend, but it failed to properly communicate its denial of a defense and coverage, or any basis for such denial until 15 months later. Such delay in responding to the tender estopped State Farm Fire and Casualty Company from denying coverage of "Borbe" as a matter of law. The Alaska Supreme Court has clearly established that such delays estop insurers from denying coverage, regardless of insurance contract provisions. See Sauer v. The Home Indemnity, 841 P.2d 176.

Other courts have made clear similar holdings supporting estoppel when insurer delays its disclaimer. See Aetna Casualty and Surety Co. v. Prestige Casualty Co., 553 N.E.2d 39 and Sims v. Illinois National Casualty Co., 193 N.E.2d 123 (Illinois 1963). Casualty Insurance Co. v. Northbrook Property & Casualty Insurance Co., 501 N.E.2d 812 (Illinois 1986).

Plaintiff State Farm Fire and Casualty Company took no steps to disclaim liability of "Borbe" until 15 months after tender, which is unreasonable as a matter of law. See Mount Vernon Fire Ins. Co. v. Unjar et al., N.Y. S. Ct., App. Div., 2nd Jud. Dept., Opinion No. 90-02394, November 4, 1991.

Other case law supports the Alaska Supreme Court's Sauer decision. See Aetna Casualty and Surety Co. v. Prestige Casualty Co., 553 N.E.2d 39, supra, Casualty Insurance Co. v. Northbrook Property & Casualty Insurance Co., 501 N.E.2d 812 (Illinois 1986).

It is undisputed from the record that State Farm Fire and Casualty Company was aware of the "Borbe" tender at the same time their appointed defense counsel, Mullin Cronin & Blair, was waving the "Borbe" file before the court in the "Spokane" case at least 15 months before State Farm Fire and Casualty Company finally gave formal denial of its intent to defend its insureds in "Borbe."

It is undisputed that State Farm Fire and Casualty Company, through its appointed defense counsel and agent, knew all facts of the Ptarmigan litigation, which constituted a duty to defend Ptarmigan. Petitioner Bolt relied on insurer appointed counsel in assuming the defense of "Ptarmigan" and had a right to believe he would be zealously and competently represented and that his attorney would take care of routine matters such as securing a protective order, conducting depositions and other discovery, and requesting a jury trial. State Farm Fire and Casualty Company's appointed counsel totally controlled Ptarmigan for more than 12 months before a default judgment was entered.

c. **State Farm Fire and Casualty Company violated its duty to defend which encompassed a duty to settle the underlying litigation and a duty to post bonds on appeal.**

State Farm Fire and Casualty Company's appointed counsel, under reservation of rights, controlled all aspects of insureds' defense in Spokane for a period of 18 months, including appeals, to include 5 months prior to non-existent plaintiff filing the declaratory judgment action. State Farm Fire and Casualty Company refused to allow insureds separate independent counsel and refused to allow their appointed counsel to either withdraw from the case or give up control of insureds defense for 15 months.

State Farm Fire and Casulty's appointed counsel admitted to be in a conflict between their "employer" and their client, petitioner, only after insured defendants (to include petitioner) sought to settle the litigation by consent agreement using insurance proceeds. Appointed counsel refused to negotiate any settlement for their alleged client, Petitioner Bolt, using any insurance-related proceeds because it would create a "conflict" between them and their "employer".

Insurer's duty to defend also includes a good faith duty to settle. The insurer's implied duty to its insured is to zealously guard the insured's interests when deciding whether to accept an offer of settlement of the third-party's claim or to take the case to trial. Some courts have gone further and held that the insurer has an affirmative duty to initiate settlement negotiations if the third party has made no settlement offers. See, e.g., Guarantee Abstract & Title Co. v. Interstate Fire & Casualty Co., 618 P.2d 1195, 1199 (Kansas 1980); Ranger

County Mut. Ins. Co. v. Guin, 723 S.W.2d 656, 659 (Texas 1987).

An insurer owes its insured a duty to accept an offer of settlement within the policy limits when there is a substantial likelihood of a judgment being rendered against the insured in excess of those limits. Larraburu Bros. v. Royal Indem. Co., 604 F.2d 1208, 1211-1212 (9th Cir.1979). The test of the insurer's conduct is one of reasonableness. Id. at 1212; Memphis Bank & Trust Co. v. Tennessee Farmers Mut. Ins. Co., 619 S.W.2d 395, 397 (Tenn. App.1981); Crisci v. Security Ins. Co., 426 P.2d 173, 176-177 (1967).

As regards offers of settlement, the insurer must give the insured's interests at least as much consideration as it gives its own. Larraburu Bros. V. Royal Indem. Co., 604 F.2d 1208, 1212; Gibson v. Western Fire Ins. Co., 682 P.2d 725, 730 (Mont. 1984). If the insurer breaches this duty, some law provides the insured with a cause of action in tort. See Beck v. Farmers Ins. Exch., 701 P.2d 795, 799 (Utah 1985). State Farm Fire and Casualty Company was estopped form denying coverage to insured defendants in the "Spokane" litigation.

Courts have articulated various standards for finding of "bad faith," some requiring an element of willfulness or recklessness, see, e.g., Commercial Union Ins. Co. v. Liberty Mut. Ins. Co., 393 N.W.2d 161, 164 (Mich. 1986) (insurer liable for arbitrary, reckless, indifferent, or intentional disregard of the insured's interests), and others holding that merely negligent conduct will suffice. See e.g., Kabatoff v. Safeco Ins. Co. of America, 627 F.2d 207, 209 (9th Cir.1980) (insurer liable if it failed, negligently or in bad faith, to settle).

State Farm Fire and Casualty Company acted in bad faith when it ordered its appointed counsel not to settle "Spokane" when insured defendants sought a settlement within policy limits. State Farm Fire and Casualty refused to authorize insured defendants to settle "Ptarmigan within policy limits while they controlled all aspects of the case, causing State Farm Fire and Casualty Company to be liable for settlement now at any reasonable amount."

d. Whether the U.S. District Court lacked jurisdiction and erred in assuming discretionary jurisdiction?

A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises. Philbrook v. Glodgett, 421 U.S. 707, 95 S.Ct. 1893, 44 L.Ed.2d 525 (1975); City of Kenosha, Wisconsin v. Bruno, 412 U.S. 507, 511, 93 S.Ct. 2222, 2225, 37 L.Ed.2d 109 (1973) (Courts of Appeals and the Supreme Court have a duty to see to it that jurisdiction of the district court is not exceeded.)

The Federal Rules of Civil Procedure, Fed.R.Civ.P. 12(h)(3), requires that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." "A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." Basso v. Utah Power & Light Co., 495 F.2d 906, 909 (10th Cir. 1974) (emphasis in original). "If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter *sua sponte*. Therefore, lack of jurisdiction cannot be waived and jurisdiction cannot be conferred upon a federal

court by consent, inaction or stipulation." Id. (citations omitted). See Insurance Corp. of Ireland, Ltd. v. Compaigne des Bauxites de Guinee, 456 U.S. 694, 702, 102 S.Ct. 2099, 2104, 72 L.Ed.2d 492 (1982) ("[N]o action of the parties can confer subject-matter jurisdiction upon a federal court.... [A] party does not waive the requirement by failing to challenge jurisdiction early in the proceedings.")

Assuming the non-existent "plaintiff" (See Argument IIa heretofore.) triggered diversity citizenship (which it never could), the case below involved only issues of State Insurance Law. Congress has expressly left jurisdiction as to insurance law to the states under the McCarran-Ferguson Act, 15 U.S.C. § 1011-12 (1988). The McCarran-Ferguson Act's primary purpose was to restore to the States broad authority to tax and regulate the insurance industry in response to United States v. South-Eastern Underwriters Assn., 322 U.S. 533, 64 S.Ct. 1162, 88 L.Ed. 1440, pp. 2207-08. It was not long before the U.S. Supreme Court was forced to come to terms with these decisions in the insurance context. In South-Eastern Underwriters, it held that an insurance company that conducted a substantial part of its business across state lines was engaged in interstate commerce and thereby was subject to the anti-trust laws. This result, naturally, was widely perceived as a threat to state power to tax and regulate the insurance industry. To allay those fears, Congress moved quickly to restore the supremacy of the States in the realm of insurance regulation. It enacted the McCarran-Ferguson Act within a year of the decision in South-Eastern Underwriters. U.S. Dept of Treasury v. Fabe, 113 S.Ct. 2202, 2207 (1993).

Insurance law cases should be declined by federal courts under the Burford Abstention Doctrine, Burford v. Sun Oil Co., 319 U.S. 315. Such abstention will protect complex state administrative processes such as insurance law from federal interference. See New Orleans Public Servc. v. Council of New Orleans, 491 U.S. 350. Insured defendants first raised the question of jurisdiction at docket 182 before the summary judgment order was entered. Non-existent plaintiff only responded by stating "It is not worth wasting this court's time to itemize the lack of merit in defendants' 'cross motion' (to dismiss for lack of jurisdiction)." See docket 188 at p.2. The alleged jurisdiction taken by the court below was due to alleged diversity, which is impossible since it was filed by a non-existent party plaintiff, and other reasons. The McCarran-Ferguson Act settled the issue of jurisdiction for insurance cases, either declaratory judgments or otherwise, and that insurance cases were to be litigated only in state courts. All issues attempted to be brought on in the declaratory judgment case below by the non-existent plaintiff remain pending before the Superior Court, State of Alaska, Third Judicial District at Anchorage, case no. 3AN-94-3779-CI, which was initiated by insured defendants.

The lower court should have abstained from assuming discretionary jurisdiction and dismissed the entire case at the outset. Discretionary jurisdiction under the Declaratory Judgment Act for insurance cases was recently and clearly articulated in Allstate Ins. Co. v. Mercier, 913 F.2d 273 (6th Cir. 1990), and emphasized the discretionary nature of the federal Declaratory Judgment Act.

The Sixth Circuit has considered similar circumstances in American Home Assurance Co. v. Evans, 791 F.2d 61, 65 (6th Cir. 1986).

In Allstate v. Mercier, the Sixth Circuit court remanded the case with directions to dismiss the federal action. Recent cases on point have established clear precedent that federal district courts should decline jurisdiction over insurance declaratory judgment cases while underlying state court actions are pending. See Mitcheson v. Harris, 955 F.2d 235 (4th Cir. 1992); Stephens v. Cooper, 746 F.Supp. 292 (E.D.N.Y. 1990); El Dia, Inc. v. Hernandez Colon, 963 F.2d 488 (1st Cir. 1992); Geni-Chlor International, Inc. v. Multisonics Development Corp., 580 F.2d 981 (9th Cir. 1978); and Hecla Mining Co. v. New Hampshire Ins. Co., 811 P.2d 1083 (Colo. 1991). In Mitcheson v. Harris, 955 F.2d 235 (4th Cir. 1992), the Court of Appeals held that the federal court did not have jurisdiction to entertain a liability insurer's action for a declaratory judgment regarding its obligation to defend and indemnify its insured when the underlying matter for which the insured claimed coverage was the subject of an action already pending in state court. The federal court action was dismissed.

Defendants moved for dismissal of the case below at dockets 182 and dockets 295-297. The lower court never gave any definitive basis for taking jurisdiction, but only stated: "It is suggested that this action is premature because the underlying lawsuits have not been resolved. I disagree. I find that I have and should exercise jurisdiction at this time." See order dated March 19, 1993. Docket 230. After multiple requests, the lower court incorrectly refused to grant defendants a hearing on jurisdictional issues, believed to be due primarily to the lower

court's bias and prejudice against insured defendants-appellants and in favor of plaintiff. See dockets 262, 263, and 275.

e. **Federal courts have no jurisdiction to determine insurer's obligation to defend or indemnify with respect to insurance issues that are or will be the subject of state court litigation.**

Once the district court erred and allowed non-existent "plaintiff" to correct its "clerical" mistakes and substitute State Farm Fire and Casualty Company, as plaintiff, another jurisdictional issue was present which justified dismissal. No federal questions had been raised — only issues of state law, which precluded the district court's jurisdiction to hear the case. Defendants filed a cross-motion to dismiss for lack of jurisdiction over state law issues on December 14, 1992, at docket 182, which was summarily denied.

The Ninth Circuit stated in Ticor Title v. American Resources, 859 F.2d 772 (9th Cir. 1988) that federal courts may decline to assert diversity jurisdiction over a declaratory judgment action that raises issues of state law when those same issues are being presented contemporaneously to state courts. See Ticor, 859 F.2d at 773 referring to Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 126, 88 S.Ct. 733, 746, 19 L.Ed.2d 936 (1968); Brillhart v. Excess Ins. Co., 316 U.S. 491, 491-97, 62 S.Ct. 1173, 1174-77, 86 L.Ed. 1620 (1942); see generally Geni-Chlor International, Inc. v. Multisonics Development Corp., 580 F.2d 981, 984-85 (9th Cir. 1978). The moot declaratory judgment complaint at bar focused on the duty to defend in three underlying state court cases that were active and not near any final adjudication. The

f. **Whether the U.S. District Court erred by not ordering a stay in the proceedings, once debtor-petitioner filed a chapter 11 petition and filed formal notice with the U.S. District Court, causing all subsequent orders and judgments to be void *ab initio*?**

Upon debtor-petitioner's filing of chapter 11 and filing a notice of such in the district court, an order of stay should have been entered. The proceedings were not stayed but allowed to accelerate by Judge Singleton, causing all orders and judgments entered by the district court in the declaratory judgment action subsequent to August 25, 1993, which includes the alleged final judgment and amended judgments, to be void *ab initio*. The automatic stay under 11 U.S.C. § 362 suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor or related parties or related issues. See Celotex Corp. v. Edwards, 115 S.Ct. 1493 (1995). This is so because § 362's stay is mandatory and "applicable to all entities", including state and federal courts. 11 U.S.C. § 362(a). See Boynton v. Ball, 121 U.S. 457, 466-67, 7 S.Ct. 981, 984, 30 L.Ed. 985 (1887) ("where the bankruptcy proceedings are brought to the attention of the court in which a suit is being prosecuted against a bankrupt, that court shall not proceed to final judgment until the question of his discharge shall have been determined."). See In re Highway Truck Drivers & Helpers Local 107, 888 F.2d at 299 n. 8 (if state court proceeds in violation of stay, "such proceedings would have been in excess of the state court's authority and subject to collateral attack"); Ellis v. Consolidated Electric Corp., 711 F.2d 60, 61 (9th Cir. 1983)

("the automatic stay of proceeding is applicable at both the trial and appellate levels"), cert. denied, 478 U.S. 1021, 106 S.Ct. 3335, 92 L.Ed.2d 740 (1986); Kommanditselskab Supertrans v. O.C.C. Shipping, Inc., 79 B.R. 534, 540 (S.D.N.Y. 1987) (if stay applies, "the district court's power to adjudicate the case is suspended pending the outcome of the bankruptcy proceedings").

The automatic stay's effect on judicial proceedings against the debtor does not depend upon whether the court finds for or against the debtor. Ellis v. Consolidated Electric Corp., 894 F.2d 371, 373 (10th Cir. 1990). Once triggered, the automatic stay of an action pending against the debtor in district court "continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay. 11 U.S.C. § 362(a), (c)(2), (d), (e), (f)." Pope v. Manville Forest Products Corp., 778 F.2d 238, 239 (5th Cir. 1985). See also In re De Jesus Saez, 721 F.2d 848, 851-2 (1st Cir. 1983) (stay terminates when Chapter 13 petition is dismissed).

Absent relief from the stay, judicial actions and proceedings against the debtor are void *ab initio*. Kalb v. Feuerstein, 308 U.S. 433, 438-40, 60 S.Ct. 343, 346, 84 L.Ed. 370 ("the action of the ... Court was not merely erroneous but was beyond its power, void, and subject to collateral attack"). See also In re Ward, 837 F.2d 124, 126 (3rd Cir. 1988) (sheriff's sale conducted in violation of the stay is "void and without effect", citing Kalb). Kalb cited many other cases holding similar decisions.

g. **Whether federal district courts have jurisdiction to determine insurers duties to defend or indemnify**

with respect to insurance controversies that are or will be the subject of state court litigation?

Defendants filed a cross-motion to dismiss for lack of jurisdiction over state law issues on December 14, 1992, at docket 182, which was summarily denied.

The Ninth Circuit stated in Ticor Title v. American Resources, 859 F.2d 772 (9th Cir. 1988) that federal courts may decline to assert diversity jurisdiction over a declaratory judgment action that raises issues of state law when those same issues are being presented contemporaneously to state courts. See Ticor, 859 F.2d at 773 referring to Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 126, 88 S.Ct. 733, 746, 19 L.Ed.2d 936 (1968); Brillhart v. Excess Ins. Co., 316 U.S. 491, 491-97, 62 S.Ct. 1173, 1174-77, 86 L.Ed. 1620 (1942); see generally Geni-Chlor International, Inc. v. Multisonics Development Corp., 580 F.2d 981, 984-85 (9th Cir. 1978).

In this case, the underlying state court litigation remains pending. Factual issues are continuing to be determined and formulated in "Ptarmigan" and "Spokane," and in insureds' bad faith lawsuit against State Farm Fire and Casualty Company. This federal court declaratory judgment action can only result in further duplicative and disruptive litigation and a waste of judicial resources and substantially increases the litigation cost for all parties, issues of jurisdiction, collateral estoppel, and res judicata issues will ignite and trigger staggering litigation costs. Discretionary jurisdiction in the federal court is improper as stated in Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1366 (9th Cir. 1991).

h. Whether insureds are entitled to contemporaneous payment of defense costs, fees, and expenses in answering and defending declaratory judgment actions "at the request" of insurers?

Pursuant to the supplementary payment provisions, insured defendants requested the right to counsel and contemporaneous reimbursement for all costs and attorneys' fees in the defense of the declaratory judgment action.

By filing a complaint and serving a summons, plaintiff requested the defendants to appear in the United States District Court for the District of alaska to defend their right to coverage under the applicable policies. In fact, plaintiff's request was coupled with its invocation of the power of the United States District Court, which includes such sanctions as contempt and default for failure to respond to the request to appear and defend. While plaintiff was non-existent, the lawyers who filed and prosecuted the case under the power of the U.S. District Court made the "request" in a "lawsuit" against insureds, seeking damages, i.e., attorneys' fees, costs, and expenses, which were eventually awarded, not withstanding the uncertainties clouded by jurisdictional questions. Insureds were forced to answer and defend a "lawsuit" which is covered by the policies and requires a defense by State Farm Fire and Casualty Company. There are no exclusions as to coverage in the duty to defend language for "declaratory judgment actions."

Insureds are entitled to payment of their costs and attorneys' fees for independent counsel defending a declaratory judgment action to determine coverage, since such claim is within the supplementary payments coverage for all reasonable expenses incurred by the insured at the request of the insurer.

The case most directly in point is Upland Mutual Ins., Inc. v. Noel, 519 P.2d 737, 743 (Kan. 1974). In Noel, the Kansas court held that the filing of the declaratory judgment action itself constituted a "request" by Upland, and therefore the company was obligated under its policy to reimburse the insured Noels for all reasonable expenses incurred at the company's request. Many other cases illustrate this principle. Contemporaneous payment has been approved by the ninth circuit in Gon v. First State Ins. Co., 871 F.2d 863 (9th Cir. 1989) and Okata v. MGIC Indemnity Corp., 795 F.2d 1450, corrected 823 F.2d 276 (9th Cir. 1986).

The foregoing authority, because it protects the insured, would be adopted by the Alaska Supreme Court. See CHI of Alaska, Inc. v. Employers Reinsurance Corp., 844 P.2d 1113 (Alaska 1993). Accordingly, State Farm should have paid the costs and attorneys' fees necessary to defend defendants in the declaratory judgment action and the underlying actions.

CONCLUSION

Petitioner should not be enjoined from exercising his constitutional, statutory, and equitable appellate rights. The orders of dismissal of petitioners' appeal should be reversed and vacated with an order allowing petitioner to fully prosecute his appeals in these matters. Petitioners should be allowed to argue all points and issues on appeal as raised in the trial court whether or not specifically raised in this petition as meritorius issues. Justice requires petitioner have a right to prosecute his appeals as an aggrieved citizen for all the reasons argued. Reversal of void orders and judgments entered by the district

courts without jurisdiction should be freely granted in the name of justice, fair play, and legal precedent.

Respectfully submitted,

Wayne Bolt
1317 W. Northern Lights
Suite 100
Anchorage, Alaska 99503
Phone (907) 258-6100

Petitioner

January 23, 1996

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. Court of Appeals Docket Number: 95-35296
Lower Court Docket No.: CV-91-0478-JKS
Short Title: State Farm Fire v. Bolt.

Filed September 21, 1995

ORDER

A review of the file in this case reveals that the appellant has failed to perfect the appeal as prescribed by the Federal Rules of Appellate Procedure.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to comply with the rules requiring processing the appeal to hearing.

A certified copy of this order sent to the district court, agency or Tax Court shall act as and for the mandate of this court.

FOR THE COURT:
Cathy A Catterson
Clerk of Court
/s/ Corina Orozes
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

State Farm Fire and Casualty Company, an Illinois corporation,	)
Plaintiff,	) Received Sept.20, 1995) U.S. Court of Appeals
vs.	)
Alex Wayne Bolt, Audrey Ann Bolt, White Mountain Mining Partners, Nabesna Mining Partners, and Colorado Resources, Inc.	)))

Appendix A. The district court erred in refusing to stay the proceedings below and, in violation of 11 U.S.C. § 362(a) and without jurisdiction, entered monetary sanctions against appellant and all other defendants, who were "related to" appellant's bankrupt estate, and the district court subsequently entered a final judgment and amended final judgment against bankrupt appellant and "related" parties, who were also protected by the stay. See Celotex v. Edwards, 115 S.Ct. 1493 (1995). State Farm Fire and Casualty Company and its lawyers willfully violated 11 U.S.C. § 362 by bringing motions and prosecuting the case against all defendants after being noticed of Bolt's chapter 11 filing. The automatic stay amounts to an injunction and is equivalent to court order for contempt purposes. 11 U.S.C.A. § 362. See In re Xavier's of Beville, 172 B.R. 667.

Appellee State Farm Fire and Casualty Company eventually obtained, post final judgment, an ex parte relief from stay order from the U.S. Bankruptcy Court to collect more than $99,000 in attorneys fees from the bankrupt estate. See Appendix B. The ex parte order (Appendix C) was statutorily defective, in contempt of court, and void, since it was obtained ex parte and without notice and hearing as statutorily required under 11 U.S.C. § 362(d). Further, it is defective in attempting to "affirm" the void final judgment previously entered by the district court.

Appellee maliciously and negligently commenced judgment-debtor hearings and had appellant arrested and confined in jail when appellant attempted to show good cause under 28 U.S.C. § 1826. See Appendix C.

Appellee's acts constitute bad faith, tortious breach of contract, and continuing willful violation of 11 U.S.C. § 362 and contempt of court in proceeding against bankrupt appellant and "related" parties and property of the bankruptcy estate. Justice and the law require an enlargement of time to allow appellant to finalize the chapter 11 case before requiring appellant to expend thousands of dollars in filing and prosecuting this subject appeal. Should this appeal go forward at this time, the U.S. Bankruptcy Court must first order the use of estate funds to prosecute the appeal. Further, State Farm Fire and Casualty Company would be required to obtain a statutorily effective relief from stay order to prosecute appellee's brief.

Appellant further, as partial support for this motion, incorporates appellant's motion for injunctive relief filed in the court below and denied by the district court, which triggered this instant appeal under 28 U.S.C. 1292(a). See Appendix D.

Appellant moves, in good faith, for the enlargement of time as requested.

Dated this 19th day of September, 1995.

/s/ Wayne Bolt
Wayne Bolt

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

State Farm Fire and Casualty Co.,	)
Plaintiff,	) No. 95-35296
vs.	) DC # CV-91-478-JKS
	) Alaska (Anchorage)
Alex Wayne Bolt, et al.,	) ORDER
Defendants.	) Filed Oct. 26, 1995

Before: Beezer, Thompson and T.G. Nelson, Circuit Judges

Appellant's motion for extension of time to file the opening brief, filed September 20, 1995, is construed as a motion to reinstate his appeal. So construed, the motion is denied.

No motions for reconsideration, rehearing, clarification, stay of the mandage, or any other submissions shall be filed or entertained in this closed docket.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

State Farm Fire and Casualty	)
Company, an Illinois corporation,	)
Plaintiff,	) 9CCA No. 95-35296
vs.	) DC# A91-478-CV (JKS)
	) DC# A95-130-CV (JKS)
Alex Wayne Bolt, Audrey Ann Bolt)	
White Mountain Mining Partners,	)
Nabesna Mining Partners, and	)
Colorado Resources, Inc.	)
Defendants.	)

NOTICE OF SUPPLEMENTAL APPEAL

Appellant Wayne Bolt timely filed a notice of appeal on March 27, 1995, to this court's order filed February 28, 1995, now pending in the Ninth Circuit Court of Appeals. Appellant files this supplemental notice of appeal to include the orders entitled: "Order" filed April 13, 1995; "Order Directing Alex Wayne Bolt To Show Cause In Writing Why He Should Not Be Held In Civil Contempt And Fined The Sum Of $2,500 For Violating This Court's Order At Docket No. 454 Forbidding Bolt From Attempting To Relitigate At This Level Issues Previously Decided Against Him" filed April 13, 1995; "Order From Chambers" filed April 4, 1995; and "ORDER" filed May 22, 1995 (attached).

Dated: June 21, 1995 /s/ Wayne Bolt
Wayne Bolt

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Alex Wayne Bolt, et al.,	)
Plaintiff,	) No. 95-130 CV (JKS)
vs.	)
	) Order
Judge James K. Singleton, et al.	) Filed April 13, 1995
Defendant.	)

ORDER

It appears that this action involves common questions of fact and law with another case now pending before this Court. *State Farm Fire and Casualty Co. v. Alex Wayne Bolt, et al.*, A91-478 CV (JKS); FED. R. CIV. P. 42.

IT IS THEREFORE ORDERED:

This case will be consolidated with A91-478 CV (JKS), and all future and further filings will be made in that earlier case, under its case number.

Dated: April 12, 1995 /s/ James K. Singleton
Honorable James K. Singleton, Jr.
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

State Farm Fire and Casualty	)
Company, an Illinois corporation,	)
Plaintiff,	) 9CCA No. 95-35296
vs.	) DC# A91-478-CV (JKS)
	) DC# A95-130-CV (JKS)
Alex Wayne Bolt, Audrey Ann Bolt)	
White Mountain Mining Partners,	)
Nabesna Mining Partners, and	)
Colorado Resources, Inc.	)
Defendants.	)

MEMORANDUM OF LAW SUPPORTING LACK OF JURISDICTION BY THE DISTRICT COURT OVER DEBTORS IN BANKRUPTCY

This court was noticed on April 12, 1995, of chapter 11 petitions filed in U.S. Bankruptcy Court for Nabesna Mining Partners (NMP), White Mountain Mining Partners (WMMP), and Colorado Resources, Inc. (CRI), all of which were named defendants and are currently specific parties required by court order to participate in judgment-debtor proceedings brought on by State Farm Fire and Casualty Company under their void judgment that was entered on December 21, 1993, while debtor-defendant Bolt was protected by the automatic stay provisions of 11 U.S.C. § 362(a).

As a result of the notice of filings on April 12, 1995, this court ordered debtor to show cause why this court may be without jurisdiction to continue these instant judgment-debtor proceedings. As a matter of law and well-settled jurisdictional

precedent, this court lacks jurisdiction to continue the judgment-debtor proceedings, or any other aspect of this case, pending relief from stay under 11 U.S.C. § 362(d) and pending disposition of the appeals pending before the Court of Appeals for the Ninth Circuit of this court's order of February 28, 1995, and subsequent orders which denied injunctive relief which was sought to terminate these instant judgment-debtor proceedings as a matter of law.

1. **Filing a petition in bankruptcy stays other judicial proceedings against debtor.**

Once a petition for protection under the Bankruptcy Code is filed, all judicial proceedings against debtor are stopped. Insured defendants' filing of the bankruptcy petitions and notice to the U.S. District Court should stay, as a matter of law, the proceedings under 11 U.S.C. § 362. See Boynton v. Ball, 121 U.S. 457, 466-67. See also Ellis v. Consolidated Electric Corp., 711 F.2d 60-61 (9th Cir. 1983). Bankruptcy Code 11 U.S.C. § 362(a) states in pertinent part:

> 11 U.S.C. 362(a) operates as a stay, applicable to all entities, of — (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

> (2) the enforcement against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

The automatic stay is a basic protection afforded debtors under the bankruptcy laws. In particular, § 362(a)(3) protects debtor from:

> "Any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." The second clause of § 362(a)(3), was added by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98-353, 98 Stat. 355, to clarify that the automatic stay extends to any exercise of control over property of the estate, Norton Bankr. Code Pamphlet 209 (1990-91 ed.), an amendment which effectively widened the scope of the stay. Collier's Bankr. Manual, ¶ 362.03 at 362-19—362-20 (3d ed. 1989).

In re Abrams, 127 B.R. 239, 241 (9th Cir. BAP 1991).

The automatic stay is a basic protection afforded debtors under the bankruptcy laws, and its scope is intended to be broad. In re Stringer, 847 F.2d 549, 551-52 (9th Cir. 1988); see also H.R.REP. No. 95-595, 95th Cong., 1st Sess. 340-41

(1977), reprinting in 1978 U.S.Code Cong. & Admin.News 5787, 5963, 6296.

It has been held that a policy of insurance is property of the estate, thus making § 362 applicable. A.H. Robins Company, Inc. v. Piccinin, 788 F.2d 994 (4th Cir.), cert. denied, 107 S.Ct. 251 (1986); Tringali v. Hathaway Machinery Co., Inc., 796 F.2d 553 (1st Cir. 1986); In re Minoco Group, 14 B.C.D. 1399 (9th Cir. 1986); and Scrima v. John Devries Agency, Inc., 103 B.R. 128 (W.D. Mich. 1989).

The scope of the automatic stay under 11 U.S.C. § 362(a) is broad. Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp., 682 F.2d 446, 448 (3d Cir. 1982). "All proceedings are stayed, including ... judicial proceedings. Proceedings in this sense encompasses civil actions...." Id. Whether a specific judicial proceeding falls within the scope of the automatic stay must be determined by looking at the proceeding "at its inception." St Croix, 682 F.2d at 449. "That determination should not change depending on the particular stage of the litigation at which the filing of the petition in bankruptcy occurs." Id. Thus, the dispositive question is whether a proceeding was "originally brought against the debtor." Id. See also Teachers Ins. & Annuity Ass'n of America v. Butler, 803 F.2d 61, 64-65 (2nd Cir. 1986).

Section 362(d), 11 U.S.C., provides in part: "On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause....". Only the bankruptcy court with jurisdiction over a

debtor's case has the authority to grant relief from the stay of judicial proceedings against the debtor. Cathey v. Johns-Manville Sales Corp., 711 F.2d 60, 62-63 (6th Cir. 1983), cert. denied, 478 U.S. 1021, 92 L.Ed.2d 740 (1986). The bankruptcy court may provide relief upon request of "a party in interest" and after notice and a hearing. See 11 U.S.C. § 362(d). Plaintiff State Farm sought no relief from stay until after final judgment was entered against insured defendants. No relief from stay had been sought at the time Judge Singleton entered the $10,000 sanction order against petitioner on October 1, 1993, at docket no. 328. No relief from stay had been sought by State Farm at the time final judgment was entered on December 21, 1993, at docket no. 361.

Actions taken against the debtor's property without knowledge of the stay will be null and void. Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306 (11th Cir. 1982); Smith v. First America Bank, N.A., 876 F.2d 524 (6th Cir. 1989); In re Taylor, 884 F.2d 478 (9th Cir. 1989); Ellis v. Consolidated Diesel Electric Corp., 894 F.2d 371 (10th Cir. 1990) (actions taken in violation of stay are merely voidable); see Sikes v. Global Marine, Inc., 881 F.2d 176 (5th Cir., 1989); Picco v. Global Marine Drilling Co., 900 F.2d 846 (5th Cir. 1990); In re Schwartz, 119 B.R. 207 (9th Cir. Bankr. 1990) and cases cited therein; In re Calder, 907 F.2d 953 (19th Cir. 1990). Knowing violation may be contemptuous and result in an award of costs and attorneys' fees. See, e.g., Fidelity Mort. Investors v. Camelia Builders, Inc., 550 F.2d 47 (2d Cir. 1976), cert. denied 429 U.S. 1093 (1977); In re Asters, 4 C.B.C.2d 707 (Bankr. D.R.I. 1981).

2. **All actions taken, orders or judgments entered in violation of the automatic stay are void ab initio.**

The automatic stay under 11 U.S.C. § 362 suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor. This is so because **§ 362's stay is mandatory and "applicable to all entities", including state and federal courts. 11 U.S.C. § 362(a).** See Boynton v. Ball, 121 U.S. 457, 466-67, 7 S.Ct. 981, 984, 30 L.Ed. 985 (1887) ("where the bankruptcy proceedings are brought to the attention of the court in which a suit is being prosecuted against a bankrupt, that court shall not proceed to final judgment until the question of his discharge shall have been determined."). See In re Highway Truck Drivers & Helpers Local 107, 888 F.2d at 299 n. 8 (if state court proceeds in violation of stay, "such proceedings would have been in excess of the state court's authority and subject to collateral attack"); Ellis v. Consolidated Electric Corp., 711 F.2d 60, 61 (9th Cir. 1983) ("the automatic stay of proceeding is applicable at both the trial and appellate levels"), cert. denied, 478 U.S. 1021, 106 S.Ct. 3335, 92 L.Ed.2d 740 (1986); Kommanditselskab Supertrans v. O.C.C. Shipping, Inc., 79 B.R. 534, 540 (S.D.N.Y. 1987) (if stay applies, "the district court's power to adjudicate the case is suspended pending the outcome of the bankruptcy proceedings").

The automatic stay's effect on judicial proceedings against the debtor does not depend upon whether the court finds for or against the debtor. Ellis v. Consolidated Electric Corp., 894 F.2d 371, 373 (10th Cir. 1990). Once triggered, the automatic stay of an action pending against the debtor in district court "continues until the bankruptcy case is closed,

dismissed, or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay. 11 U.S.C. § 362(a), (c)(2), (d), (e), (f)." Pope v. Manville Forest Products Corp., 778 F.2d 238, 239 (5th Cir. 1985). See also In re De Jesus Saez, 721 F.2d 848, 851-2 (1st Cir. 1983) (stay terminates when chapter 13 petition is dismissed).

Absent relief from the stay, judicial actions and proceedings against the debtor are void ab initio. Kalb v. Feuerstein, 308 U.S. 433, 438-40, 60 S.Ct. 343, 346, 84 L.Ed. 370 ("the action of the ... Court was not merely erroneous but was beyond its power, void, and subject to collateral attack"). See also In re Ward, 837 F.2d 124, 126 (3rd Cir. 1988) (sheriff's sale conducted in violation of the stay is "void and without effect", citing Kalb).[1]

Not only are the final judgment and amended judgment void ab initio, all supplemental judgment debtor proceedings

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1. Other cases among the many holding that judicial acts in violation of the automatic stay are void, are these: In re Advent Corp., 24 B.R. 612 (1st Cir.Bankr.1982); In re 48th Street Steakhouse, Inc., 835 F.2d 427, 431 (2d Cir.), cert. denied, 485 U.S. 1035, 108 S.Ct. 1596, 99 L.Ed.2d 910 (1987); In re Smith, 876 F.2d 524, 526 (6th Cir. 1989); In re Shamblin, 890 F.2d 123, 125 (9th Cir. 1989); Ellis, 894 F.2d at 372; In re Albany Partners, Ltd., 749 F.2d 670, 675 (11th Cir. 1984); In re Joyce Purnell, 92 B.R. 625 (Bankr.E.D.Pa. 1988); In re Clark, 69 B.R. 885, 891, vacated in part on other grounds, 71 B.R. 747 (Bankr.E.D.Pa. 1987); In re A.I.A. Industries, Inc., 75 B.R. 1013, 1021 n. 5 (Bankr.E.D.Pa. 1987); In re Fasgo, Inc., 58 B.R. 99, 100 (Bankr.E.D.Pa. 1986); In re Marta Group, Inc., 33 B.R. 634, 639 (Bankr.E.D.Pa. 1983).

and executions by State Farm under void judgments are moot, improper, have no legal basis, must be vacated and subject State Farm to compensatory and punitive damages under 11 U.S.C. § 362(h).

3. **Pending appeals before the Ninth Circuit over the February 28, 1995, order denying injunctive relief removes all jurisdiction from this court.**

When a proper notice of appeal has been timely filed, the general rule is that jurisdiction over any matters involved in the appeal is immediately transferred from the trial court to the appellate court. In re Consolidated Equity Properties, Inc., 136 B.R. 261, 265 (D.Nev. 1991); In re Thorpe, 655 F.2d 997, 998 (9th Cir. 1981). See also Petrol Stops Northwest v. Continental Oil Co., 647 F.2d 1005, 1010 (9th Cir. 1981).

Motions for injunctive relief were filed seeking to terminate the judicially infirm judgment-debtor proceedings. This court initially refused to consider the injunctive relief motions, and subsequently considered the injunctive relief motion as a "motion for reconsideration" of the entire case and denied the injunctive relief motion by order of February 28, 1995, which has been timely appealed to the Ninth Circuit. This court's election to treat the motion for injunctive relief as a "motion for reconsideration," and this court's extensive order on "reconsideration" appears to give finality and appealability to insured defendants, which has now been docketed by the Ninth Circuit and a schedule has been established for the appellate process. This appeal covers all issues sought by the injunctive relief motion and all issues revisited by this court and "reconsidered" by this court in the February 28, 1995, order, which was all inclusive of the ongoing judgment-debtor

proceedings. The Time Schedule Order for this appeal has been established as shown on Exhibit B.

Once a timely filed notice of appeal was filed, all jurisdiction over matters on appeal pass to the appellate court. Upon notice of defendants' chapter 11 filing, plaintiff State Farm continued to aggressively prosecute the case against defendants in willful violation of the automatic stay, and with the direction and orders of the district court. Plaintiff State Farm successfully moved for monetary sanctions directly against Bolt while Bolt was protected by the automatic stay, and further, State Farm successfully moved for dismissal of Bolt's counter-claims while Bolt was protected by the automatic stay, and further State Farm obtained a final judgment declaring defendants had no coverage in the underlying litigation which deprived defendants of significant property rights. Plaintiff State Farm did not seek any relief from stay between August 25, 1993, and the entry of final judgment by the U.S. District Court on December 21, 1993. The final judgment, entered in violation of 11 U.S.C. § 362(a), deprived defendants of valuable insurance policy property rights. The district court lacked jurisdiction to enter final judgment denying insured defendants' policy rights and bad faith claims which were a substantial and valuable property interest of debtor and other insured defendants. All insured defendants were so intertwined and effectual of any reorganization in Bolt's chapter 11 proceedings so as to be fully protected by the automatic stay provisions of 11 U.S.C. § 362(a).

The U.S. District Court demonstrated bias and prejudice against all defendants, and made clear legal error by allowing plaintiff State Farm to aggressively prosecute the action which

should have been stayed, as a matter of law, when defendant Bolt filed his chapter 11 petition and gave formal notice to the district court. The district court also demonstrated bias and prejudice by entering a final judgment against defendant Bolt, who was a bona fide debtor fully protected by the automatic stay provision under 11 U.S.C. § 362(a).

This court should, as a matter of law, stay all proceedings in case no. A91-478. Insured defendants Wayne Bolt, NMP, WMMP, and CRI are debtors in bankruptcy and protected by 11 U.S.C. § 362(a). The final judgment entered on December 21, 1993, was in violation of the stay since Wayne Bolt was fully protected from all judicial proceedings under 11 U.S.C. § 362(a).

The Court of Appeals of the State of Washington has correctly applied this law in the case that triggered this entire litigation at the outset, and has withdrawn and vacated orders and judgments initially entered in violation of the automatic stay after Bolt filed chapter 11 and gave formal notice of the chapter 11 filing. See Exhibit A. The Court of Appeals of the State of Washington has correctly upheld the law. This court should do likewise and order the vacation of all orders and judgments entered after Bolt filed chapter 11 and noticed this court on August 27, 1993. Also NMP, WMMP, and CRI have now filed chapter 11 petitions. Insured defendants request immediate stay of these proceedings for the reasons and law cited.

The district court has no jurisdiction to continue any aspect of this case for lack of jurisdiction due to (1) the bankruptcy proceedings, and (2) pending appeals before the Ninth Circuit over all aspects of the case. This court has a

duty and obligation, as a matter of law, to stay all proceedings and go no further in any aspect of the case.

Dated: April 19, 1995 /s/ Wayne Bolt
Wayne Bolt

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

State Farm Fire and Casualty	)	
Company, an Illinois corporation,	)	
Plaintiff,	)	
vs.	)	DC# A91-478-CV (JKS)
	)	
Alex Wayne Bolt, Audrey Ann Bolt)		
White Mountain Mining Partners,	)	
Nabesna Mining Partners, and	)	
Colorado Resources, Inc.	)	
Defendants.	)	

NOTICE OF FILING BANKRUPTCY

Notice is hereby given that defendant Wayne Bolt filed a Chapter 11, Debtor in Possession Petition for Bankruptcy in the U.S. Bankruptcy Court, Anchorage, Alaska, case no. A93-00619, on August 25, 1993, due to State Farm Fire and Casualty Company's bad faith, fraud, and tortious breach of contracts and agreements with defendant Wayne Bolt.

Dated: August 27, 1993 /s/ Wayne Bolt
Wayne Bolt

MINUTES OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

State Farm Fire and Casualty Co.,	)
Plaintiff,	) No. 91-478-CV (JKS)
vs.	)
	) Order From Chambers
Alex Wayne Bolt, et al.,	) Filed October 1, 1993
Defendants.	)

There are a number of pending motions that will be addressed in this Order. Oral argument would not be helpful; and therefore, it will not be held. Federal Rule of Civil Procedure 78; Local General Rule 5(C). The motion for oral argument at Docket No. 326 is **DENIED**.

This is an action by State Farm Fire and Casualty Company ("State Farm") to determine whether coverage under various personal liability and home owners insurance policies, which State Farm issued to Alex Wayne Bolt and Audrey Bolt and certain corporations and limited partnerships which the Bolts control, extended to certain litigation against the Bolts, the corporations and the limited partnerships charging mismanagement and corporate fraud. The Court has determined on summary judgment that no coverage exists under the policies in question under the undisputed facts in those pending cases. Docket No. 230. Nevertheless, the Alaska Supreme Court has distinguished an insurer's duty to defend from its duty to indemnify. Consequently, defendants have filed various actions to defendants' detriment. Defendants ask

that this Court find that State Farm has waived the right to deny coverage or alternatively that it is estopped from contesting coverage. See, e.g., CHI of Alaska, Inc. v. Employers Reinsurance Corp., 844 P.2d 1113 (Alaska 1993); Sauer v. Home Indemnity Co., 841 P.2d 176 (Alaska 1992). Defendants also contend that State Farm has breached the covenant of good faith and fair dealing in processing these claims. But see Hillman v. Nationwide Mut. Fire Ins. Co., 855 P.2d 1321 (Alaska 1993) (covenant of good faith and fair dealing not breached as a matter of law where insurer had an objectively reasonable basis for its conduct. All of these claims are yet to be resolved.

The various defendants have moved to dismiss on jurisdictional grounds. Docket Nos. 284, 285, 295. They note that the plaintiff is named in the complaint as State Farm Insurance Company, an Illinois corporation, and that no corporation by that name is recognized by the State of Illinois. State Farm responds that it was incorrectly named in the original pleading, that its true name is State Farm Fire and Casualty Company and that this Court previously entered an Order correcting the error but failed to amend the caption of the pleadings to reflect the correction. See Order at Docket No. 307. Defendants reasoned that misidentification by the plaintiff in the plaintiff's own complaint is fatal to jurisdiction and cannot be corrected. I am unpersuaded by defendants' arguments. A rose by any other name would smell as sweet. It has been clear to anyone since the inception of this litigation that the insurer that issued the policies of insurance to Bolt and his companies under which Bolt claimed coverage in the various actions accusing him of mismanagement is the party

seeking a declaration that those policies do not cover those actions. The wisest course is to deny the motions to dismiss but direct that henceforth the caption of this case shall reflect plaintiff's true name. The motions to dismiss at Docket Nos. 284, 285, 295 are **DENIED**. The motion to correct clerical error at Docket No. 303 is **GRANTED**.

Plaintiff has moved to dismiss all of the counterclaims for failure to comply with prior Orders of this Court regarding discovery. Docket No. 280. Bolt opposes on the ground that he disagrees with this Court's prior rulings on legal issues and apparently feels that he does not have to obey any order with which he disagrees. This is an insufficient response. See Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1411 (9th Cir. 1990) (disagreement with the court is not an excuse for failing to comply with court orders). Bolt also points to the fact that he is pro se and has declared bankruptcy.[1] Since Bolt has

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1. Bolt has previously been ordered to pay costs as a sanction for violating Court Orders. He has refused to do so claiming a potential offset which this Court did not authorize. Prior sanctions will be treated as covered by the existing stay in bankruptcy, although it is possible that such sanctions are excepted from the stay. See O'Brien v. Fischel, 74 B.R. 546 (D. Hawaii 1987). This Order does not require Bolt to pay at this time the $2,789 previously ordered as a sanction in order to maintain his counterclaims. However, the sanctions imposed by this Order are new sanctions arising after Bolt's declaration of bankruptcy. the sanctions are not covered by the stay; the Court imposes the sanctions to preserve its interest in keeping federal litigation free from unnecessary and abusive legal obstructions. See 11 U.S.C. § 362(b)(4). Consequently, Bolt will be required to pay the sanctions imposed by this Order

(continued...)

refused to comply with a number of Orders over a long period of time, it would be useful to review his prior contentions. First, Bolt argued that under his reading of the policies he was entitled to be provided an independent defense at State Farm's expense in this declaratory judgment action and that all proceedings should be stayed until State Farm provided the defense. After briefing, I concluded that the Alaska Supreme Court would not give the policies that interpretation. I concluded that the Alaska Supreme Court would hold that the right to an independent defense applied only to the underlying litigation in state court and that Bolt would have to prevail on the merits in this litigation before he would be entitled to costs and attorney's fees. See, e.g., Local General Rule 21.1 and Alaska Rule of Civil Procedure 82. I therefore denied Bolt's request for prepayment and stay and ordered him to proceed with discovery. Docket Nos. 153, 173.

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1. (...continued)
forthwith as a condition for maintaining his counterclaims in this action. Should Bolt claim inability to pay by reason of indigence, the Court will order him, individual and as managing partner or managing agent of the other defendants, to appear before one of the Magistrate Judges for a judgment debtor examination where plaintiff's counsel may examine him regarding his current cash flow, assets and liabilities and the cash flow, assets and liabilities of the other defendants. Bolt and the other defendants may be represented at the hearing by counsel. The Court will request a report and recommendation from the Magistrate Judge regarding any claim of indigence and thereafter determine whether Bolt and the other defendants should be excused from compliance with this part of the Order.

Second, Bolt decided that this Court had no jurisdiction over declaratory judgment actions regarding insurance. I rejected that argument. I reasoned that tort and contract litigation was pending against Bolt and the companies he controls in three separate states, that none of the actions involve a declaratory judgment action to determine policy coverage and that no useful purpose would be served by abstaining. I therefore denied the motion to dismiss for lack of subject matter jurisdiction. Docket No. 286. Finally, Bolt argues that State Farm's error in designating itself in the caption of the complaint is fatal to its claims and relieves Bolt of past non-compliance with Court Orders. I have rejected that argument in this Order. None of these arguments, whether viewed in isolation or together, excuses Bolt's intransigence. it is important to note that had Bolt, despite his views of the law, complied with this Court's Orders, this case would have been completed long ago. If Bolt prevailed, any legal errors that I made would be moot. Had he lost, he could have appealed and, if correct, would have been vindicated long ago. Non-compliance has simply prolonged this case to the disadvantage of all concerned. Clearly, Bolt's egregious conduct would justify dismissal of all of his counterclaims. See Ferdik v. Bonzalet, 963 F.2d 1258, 1260-61 (9th Cir. 1992). Further, since Bolt has indicated throughout this litigation that he was either the managing agent or the managing partner of the other defendants, it would not be unfair to dismiss their counterclaims as well. See Order at Docket No. 307, p.2 n.2.

Nevertheless, now that most of the other parties have counsel,[2] it would appear that justice would best be served by conditionally denying the motion to dismiss. The conditions will be that Bolt and the other defendants pay plaintiff forthwith the sum of $10,000 as a partial compensation for the costs and attorney's fees that plaintiff has incurred in attempting to obtain compliance with this Court's prior Orders and that Bolt and the other defendants file and serve affidavits swearing under oath and subject to the penalty of perjury that they have fully complied with all prior Orders of this Court

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2. Bolt disputes this Court's prior Order that the managing partner of a limited partnership cannot legally represent the partnership. He points to the Ninth Circuit opinion authorizing the general partner of a general partnership to represent his interest and the interest of the partnership. I previously rejected this analogy and concluded that the Alaska Supreme Court would hold that a limited partnership is more like a corporation and therefore subject to the rule that a corporation must be represented by an attorney. Bolt's efforts to represent his limited partnership Nabesna Mining Partners is in direct defiance of this prior Order and is reflective of Bolt's unwillingness to comply with directions with which he does not agree. See Christiansen v. Melinda, ___ P.2d ___, 1993 Alas. Lexis 83 (Alaska, August 13, 1993) (reiterating Alaska's strong public policy against allowing lay people to represent others pro se in the courts of this state).

directing discovery.[3] To facilitate compliance, plaintiff shall serve on Bolt and the attorneys for the other defendants and file a list of all prior Orders of this Court which it contends have not been complied with giving the date of issuance and the docket number. The list shall be served on **Monday, October 11, 1993**. Bolt and the other defendants shall have thirty days

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3. A party served with discovery requests may object to those requests and seek a protective order without violating the civil rules. Objections come too late when they are first made after a motion to compel has been made. A fortiori objections or requests for protective order come too late when they are made after an order compelling compliance has been made. By his intransigence, Bolt has forfeited the right to object to any of the discovery previously ordered by this Court. The Court will not consider further arguments based upon privilege or the contention that the requested discovery is not relevant and would not lead to the production of relevant evidence. Bolt's sole option at this stage is to fully comply or default. If an item required to be produced did not exist at the time originally requested and does not exist now, Bolt or another person with first hand knowledge of the facts may swear to that fact under oath and subject to the penalties for perjury. If Bolt or another defendant claims that a discovery request is ambiguous or unclear, i.e., subject to more than one interpretation, he shall first answer the request liberally construed to the best of his ability and then point out the ambiguity and answer the request as though the alternate meaning was intended. Under no circumstances should Bolt simply ignore the request.

thereafter to comply and file their notice of compliance which must be filed and served no later than **Friday, November 12, 1993**. The notice of compliance shall be accompanied by a receipt for the payment required by this Order. The motion to dismiss at Docket No. 280 is **DENIED WITHOUT PREJUDICE TO ITS RENEWAL IF BOLT AND THE OTHER DEFENDANTS FAIL TO TIMELY COMPLY WITH THIS ORDER.**

The motion to strike status report at Docket No. 291 is **DENIED AS MOOT**. The parties have filed their various positions regarding pending matters and the Court has acknowledged those positions. Docket No. 318.

In this Order the Court gives Bolt and the other defendants one last chance to cure discovery defaults. The existing protective order limiting defendants' discovery should remain in effect until they have complied with this Order so that no defendant benefits from the processes of this Court while he or it is in default in meeting his or its obligations. See Order at Docket No. 307. Therefore, the motion for discovery conference at Docket No. 293 is **DENIED WITHOUT PREJUDICE TO ITS RENEWAL AFTER ALL DEFENDANTS HAVE FULLY COMPLIED WITH THIS ORDER**. Bolt's cross-motions for stay of discovery and

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4. It shall be Bolt and the other defendants' responsibility to sort, classify by discovery request and index all documents and then deliver the documents so indexed and sorted to the offices of counsel for plaintiff for inspection and copying. Simply furnishing plaintiff access to boxes of documents will be insufficient compliance with this order.

protective order regarding discovery at Docket Nos. 296 and 299 are **DENIED**.

Bolt has moved for sanctions at Docket Nos. 310 and 316; neither motion has any merit. They are **DENIED**.

Plaintiff has moved to strike Bolt and the other defendants' jury demand as untimely. The notice is clearly untimely. See Fed. R. Civ. P. 38. I am not persuaded that a sufficient showing has been made to allow a discretionary jury demand. See Fed. R. Civ. P. 39. The motion to strike jury demand at Docket No. 320 is **GRANTED**.

Bolt's motion to strike pleadings and for costs is without merit. The motion at Docket No. 321 is **DENIED**.

The motion for additional time at Docket No. 323 is **DENIED**.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge, by Ardel Burritt, secretary to Judge Singleton.

Date: October 1, 1993 SECRETARY'S INITIALS: ab

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

State Farm Fire and Casualty Company, an Illinois corporation, Plaintiff,	)
vs.	) DC# A91-478-CV (JKS)
Alex Wayne Bolt, Audrey Ann Bolt) White Mountain Mining Partners, Nabesna Mining Partners, and Colorado Resources, Inc. Defendants.	) Judgement in a) Civil Case) Filed Dec. 21, 1993

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS SO ORDERED AND ADJUDGED

X That the Plaintiff State Farm Fire and Casualty Company have judgment declaring that it is not liable to Defendants or any of them for indemnity or the cost of defense under the insurance policies numbered 92-00-0278-8, 02-19-7374-8, and 01-48-6241-7, in connection with (1) RCL Northwest, Inc. et al v. Colorado Resources, Inc. et al., Case No. 89-201301-5 Civ. (Superior Court, Spokane, Washington); (2) Ptarmigan Company, Inc. v. White Mountain Mining Partners, et al., Case No. 3AN-90-9008 Civ. (Superior Court, Anchorage, Alaska); and (3) Borbe v. Nebesna Mining Partners, et al., Case No. 89-202459-9 Civ. (Superior Court, Spokane, Washington); and that Plaintiff recover from the

Defendant(s) Alex Wayne Bolt, Audrey Ann Bolt, White Mountain Mining Partners, Nebesna Mining Partners, and Colorado Resources, Inc., or any of them, its costs in this action, including the amount of $2,789 awarded by this Court by Order dated May 11, 1993 (Docket No. 256) and the amount of $10,000 awarded by this Court by Order dated October 1, 1993 (Docket No. 328).

Dated: December 21, 1993 /s/ James K. Singleton
James K. Singleton, Jr.
U.S. District Court Judge

MINUTES OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

State Farm Fire and Casualty Co.,	)
Plaintiff,	) No. 91-478-CV (JKS)
vs.	)
	) Order From Chambers
Alex Wayne Bolt, et al.,	) Filed May 4, 1994
Defendants.	)

This Court entered final judgment in favor of Plaintiff and against Defendants on April 20, 1994, and awarded attorney's fees based upon a finding that Alex Wayne Bolt, while acting for himself and as managing agent for the other Defendants, engaged in bad faith litigation. Docket No. 386 and see Order at Docket No. 385. In earlier orders, this Court required White Mountain Mining Partners and Nabesna Mining Partners to obtain counsel and denied Bolt the right to act on the partnership's behalf. Bolt has consistently ignored these orders and continues to file papers purportedly on behalf of the partnerships. The Clerk has brought Bolt's most recent filings to my attention and requested directions.[1] In reviewing the file, I note that Colorado Resources, Inc., has also filed a motion for reconsideration which, while not technically ripe under Local General Rule 5, does not raise any new issues or

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1. In an earlier order, I directed the Clerk to return Bolt's filings on behalf of other parties to him. See Order at Docket No. 385 n.1.

cite any authority and may therefore be resolved at this time. See Docket No. 386.

Alex Wayne Bolt has filed a motion for reconsideration dated May 2, 1994, which he purports to file on behalf of himself and two limited partnerships which he controls. The motion is frivolous, merely repeating arguments previously rejected on more than one occasion. Treated as a motion by Bolt personally, the motion is **DENIED**. Since Bolt has been informed that he may not file papers on behalf of his limited partnerships, the Court declines to consider his purported filings to the extent they address the rights of those parties.

Colorado Resources, Inc. ("CRI") has filed a motion for reconsideration at Docket No. 386, arguing that this Court did not separately consider its litigation strategy in awarding actual fees. This is incorrect. CRI, even after retaining independent counsel, filed vexatious pleadings and refuses to make reasonable discovery. CRI also persisted in its frivolous position that an initial misnomer in the caption of the case deprived this Court of jurisdiction despite the total absence of any authority for that proposition. CRI's position regarding attorney's fees, unsupported by any authority, was in direct conflict with Alaska Pac. Assurance Co. v. Collins, 794 P.2d 936, 948-49 & n.15 (Alaska 1990). CRI has never attempted to distinguish Collins, it apparently prefers to ignore controlling authority. CRI's litigation strategy both before and after it retained independent counsel has been characterized by repetitive, vexatious pleadings. Whether this was the product of Bolt's contumacy or independent counsel's scorched earth litigation tactics is not a relevant issue in determining a proper award of attorney's fees under Alaska R. Civ. P. 82, adopted

in part by reference in Local General Rule 21.1. The motion for reconsideration at Docket No. 387 is **DENIED.**[2]

This case is over at this level of court. A final judgment has been entered and the Defendants have filed notices of appeal. The Court is concerned that Alex Wayne Bolt has been engaging in bad faith litigation for some time characterized by his filing repetitive motions for reconsideration that raise no new issues but simply rehash arguments previously

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2. It is important to stress that this Court has never imposed sanctions on Bolt or any of the other parties or counsel for a party under Fed. R. Civ. P. 11 or any counterpart in the Alaska R. Civ. P. such as Rule 11 or Rule 95. The court has never considered Federal Rule 11 because other rules appear more applicable and believes that the Alaska Rules, with the exception of Rule 82, are not applicable in federal court in a diversity case. The Court has imposed monetary sanctions on the various defendants pursuant to Federal Rules of Civil Procedure 26 to 37 but in relatively small amounts. The primary award of attorney's fees has been made under the Alaska Rule allowing partial fees in most cases and actual fees in cases of bad faith litigation because the federal courts have held that such an award is a matter of state law in diversity cases. Federal Rule 11 is primarily intended to deter. In contrast, Alaska Rule 82 is intended to compensate. Where a litigant has multiplied proceedings in bad faith and engaged in vexatious conduct, it stands to reason that her opponent will incur costs in addition to what would have been incurred in the absence of such vexatious conduct. In such cases, the Alaska courts allow substantial attorney's fees. See, e.g., Steenmeyer Corp. v. Mortenson-Neal, 731 P.2d 1221, 1226-27 (Alaska 1987); Crook v. Mortenson-Neal, 727 P.2d 297, 306 (Alaska 1986).

rejected. Bolt has had his day in court at this level, he should carry his concerns to the Court of appeals.

IT IS THEREFORE ORDERED:

THE CLERK OF THIS COURT IS DIRECTED TO REFUSE TO FILE OR LODGE ANY FURTHER MOTIONS FOR REHEARING, FOR RECONSIDERATION, FOR RELIEF FROM JUDGMENT, FOR ARREST OF JUDGMENT, TO VACATE JUDGMENT, FOR NEW TRIAL OR TO STAY PROCEEDINGS FROM ALEX WAYNE BOLT ACTING FOR HIMSELF OR FROM ALEX WAYNE BOLT PURPORTING TO ACT FOR ANY OTHER PERSON OR ENTITY WHICH RELATE TO THIS ACTION, A91-0478 CIVIL. SHOULD BOLT PRESENT ANY SUCH PAPERS EITHER PERSONALLY OR THROUGH AN AGENT THEY ARE TO BE RETURNED TO HIM OR TO HIS AGENT FOR RETURN TO HIM. A copy of this Order shall be placed in a conspicuous place in the file in this action.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge, by Ardel Burritt, secretary to Judge Singleton.

Date: May 4, 1994 SECRETARY'S INITIALS: ab

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AMENDED JUDGMENT IN A CIVIL CASE

State Farm Fire and Casualty Co., Plaintiff,	)
vs.	) DC# A91-478-CV (JKS)
Alex Wayne Bolt, Audrey Ann Bolt) White Mountain Mining Partners, Nabesna Mining Partners, and Colorado Resources, Inc. Defendants.	) Amended Judgement) in a Civil Case) Filed April 20, 1994

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT the Judgement previously entered on December 21, 1993 at Docket No. 361 is amended to include the following provisions:

That the plaintiff, STATE FARM FIRE & CASUALTY COMPANY have final judgment against defendants, Alex Wayne Bolt, Audrey Ann Bolt, White Mountain Mining Partners, Nabesna Mining Partners, and Colorado Resources, Inc., jointly and severally, in the amount of $99,514.17 plus interest at the legal rate. See original Judgment at Docket No. 361. The amended judgment is calculated as follows: 1] $10,000 as a sanction for failure to make discovery, which was awarded October 1, 1993, at Docket No. 328; 2] $2,789.00 as

a sanction for failure to make discovery, which was awarded on May 11, 1993, at Docket No. 256 [see Docket No. 230], and 3] $86,725.17 awarded as attorney's fees April 14, 1994.

Except as amended herein, the Judgment at Docket No. 361 remains in full force and effect.

Dated: April 19, 1994 /s/ James K. Singleton
James K. Singleton, Jr.
U.S. District Court Judge

MINUTES OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

State Farm Fire and Casualty Co.,	)
Plaintiff,	) No. 91-478-CV (JKS)
vs.	)
	) Order From Chambers
Alex Wayne Bolt, et al.,	) Filed April 4, 1995
Defendants.	)

Alex Wayne Bolt seeks expedited consideration of the renewal of his motion for recusal. Docket Nos. 447 & 448. The motion reconsideration raises no issue and states no fact not previously raised and rejected. The motion is thus an untimely motion for reconsideration. The motion for expedited consideration at Docket No. 448 is **GRANTED**. The motion for reconsideration at Docket No. 447 is **DENIED**.[1] Since the motion is a frivolous restatement of arguments previously rejected, it necessarily follows that oral argument would not be useful. The request for oral argument at Docket No. 449 is **DENIED**.

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1. Bolt seeks to disqualify Magistrate Judge Branson. He makes no argument specified to Magistrate Judge Branson except the contention that I appointed him and in Bolt's view Magistrate Judge Branson is tainted by guilt by association. Since I do not consider association with me a taint, and Bolt has suggested nothing beyond speculation why it should, the motion to disqualify Magistrate Judge Branson is also **DENIED**.

Bolt moves to dismiss this action for lack of jurisdiction and seeks sanctions against State Farm and State Farm's counsel presumably for bringing an action without jurisdiction. Docket No. 446.[2] These motions rehash contentions previously raised and rejected. The motions are therefore untimely motions for reconsideration. There is no reason to grant reconsideration. The motions at Docket No. 446 are **DENIED.**[3]

Bolt seeks expedited consideration of a motion to stay further proceedings until his motion to recuse is decided.

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2. While not mentioned in the title of his motion, Bolt also complains about the lawyer he retained to represent Colorado Resources, Inc. I know of no rule which authorizes me to sanction a party's counsel at the party's request. If Bolt believes retained counsel has committed malpractice, he should bring a separate action against counsel which counsel can defend. If Bolt believes retained counsel has compromised Bolt's position with the Ninth Circuit Court of Appeals, he should file a pleading with that court clarifying his position.

3. Bolt contends that I have never granted him a hearing, i.e., considered his motions. I have read every piece of paper Bolt has filed. Bolt's filings fill thirty volumes of court records. Since virtually all of Bolt's filings duplicate earlier filings, I have probably read each of his filings many times. I have treated Bolt exactly as I have treated every other litigant who has appeared before me. My views on oral argument and evidentiary hearings are set out in *United States v. Cheely*, 814 F.Supp. 1430, 1435-38 (D. Alaska 1992). While that case directly addresses motion practice in criminal cases, the criminal practice is based on civil practice so that essentially the same rules apply regarding oral argument and hearings. *See, e.g., Cheely*, 814 F.Supp at 1436 n.4.

Docket Nos. 450 & 451. The motion for expedited consideration at Docket No. 451 is **GRANTED**. The motion to recuse is denied in this Order. The motion for stay at Docket No. 450 is therefore **MOOT** and is **DENIED**.

Bolt seeks appointment of counsel for one of his partnerships in reliance on 28 U.S.C. § 1915(d). Docket No. 436. The motion fails for two reasons: 1) A partnership cannot appear *in forma pauperis* and therefore cannot qualify for appointment of counsel. *Rowland v. California Men's Colony*, 113 S.Ct. 716 (1993); 2) Bolt has not established that the partnership is indigent. It is therefore not necessary to determine whether the partnership has any non-frivolous issues to pursue. The motion at Docket No. 436 is **DENIED**.

The motion by Kenneth Jacobus, Esq., to withdraw as counsel for Colorado Resources, Inc., at Docket No. 439 is not opposed and is **GRANTED**.

State Farm seeks a telephone deposition of Audrey Ann Bolt. Docket No. 441. The motion is opposed. Docket No. 446. The motion involves State Farm's post-judgment proceedings. This aspect of the case has been assigned to Magistrate Judge Branson and this motion will therefore be referred to Magistrate Judge Branson for decision.

Since all matters not involving post-judgment proceedings under Fed. R. Civ. P. 69 have been resolved and a final judgment previously entered, this case is referred back to Magistrate Judge Branson.

THE CLERK OF THIS COURT IS DIRECTED TO REFUSE TO FILE OR LODGE ANY FURTHER MOTIONS FOR REHEARING, FOR RECONSIDERATION, FOR RELIEF FROM JUDGMENT, FOR ARREST OF

JUDGMENT, TO VACATE JUDGMENT, FOR NEW TRIAL, OR TO STAY PROCEEDINGS IN THIS CASE FROM ALEX WAYNE BOLT ON HIS OWN BEHALF OR BY BOLT PURPORTING TO ACT FOR ONE OF THE OTHER DEFENDANTS. THIS ORDER IS WITHOUT PREJUDICE TO BOLT'S RIGHT TO PARTICIPATE IN THOSE PROCEEDINGS CURRENTLY PENDING BEFORE MAGISTRATE JUDGE BRANSON UNDER FED. R. CIV. P. 69. DECISIONS PREVIOUSLY MADE BY THIS COURT, HOWEVER, ARE THE LAW OF THE CASE AND MAY NOT BE RECONSIDERED BY MAGISTRATE JUDGE BRANSON, CONSEQUENTLY BOLT SHALL NOT ATTEMPT TO RELITIGATE BEFORE MAGISTRATE JUDGE BRANSON ANY ISSUE THAT THIS COURT HAS DECIDED AGAINST HIM. VIOLATION OF THIS ORDER IS CONTEMPT OF COURT AND WILL RESULT IN FURTHER SANCTIONS.[4]

Entered at the direction of the Honorable James. K. Singleton, United States District Court Judge, by Ardel Burritt, secretary to Judge Singleton.

Date: April 4, 1995 SECRETARY'S INITIALS: ab

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4. This court is aware that the Ninth Circuit is considering identifying Bolt as a vexatious litigant whose filings will be pre-screened. Order at Docket No. 435. That matter is outside this Court's jurisdiction. It does, however, point up the need to communicate to Bolt that this Order will be strictly enforced and that the Court will no longer tolerate repetitious and redundant filings by Mr. Bolt.

MINUTES OF THE
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

State Farm Fire and Casualty Co.,	)
Plaintiff,	) No. 91-478-CV (JKS)
vs.	)
	) Order From Chambers
Alex Wayne Bolt, et al.,	) Filed February 28, 1995
Defendants.	)

This case is currently referred to the Honorable Harry Branson, Magistrate Judge, to supervise certain post-judgment proceedings. *See* Fed. R. Civ. P. 69 (incorporated by reference Alaska R. Civ. P. 69); Order at Docket No. 396. Magistrate Judge Branson has reviewed a number of pleadings filed by Alex Wayne Bolt after judgment was entered against him and by the companies through which he does business. Magistrate Judge Branson has expressed concern that some of Bolt's contentions might be construed as motions for post-judgment relief under Fed. R. Civ. P. 60 or for a stay of judgment pending appeal pursuant to Fed. R. Civ. P. 62. Magistrate Judge Branson requests this Court to review these mattes since they are not within the terms of the referral. Magistrate Judge Branson is apparently referring to motions at Docket Nos. 402-06, 414, 420, and 426. The Court has reviewed all of Bolt's post-judgment filings and concludes that it has already ruled on all of the points which Bolt wishes to make. *See* this Court's Order denying Bolt post-judgment relief at Docket No. 373. This Court's prior orders establish the law of the case which will govern this case unless and until

reversed by the Ninth Circuit Court of Appeals. The Court does not find any basis for a rehearing or reconsideration, nor does it find any basis for a stay pending appeal without Bolt's filing a supersedeas bond. The Court therefore denies any pending motion which might be construed as a motion for post-judgment relief or for a stay. This case shall therefore be returned to Magistrate Judge Branson to continue superintending post-judgment proceedings. In order to understand the basis for the Court's rulings, some history is necessary.

State Farm Fire and Casualty Company ("State Farm") sued Alex Wayne Bolt, Bolt's wife An, and various limited partnerships and a corporation, through which the Bolts carried on their mining business. In its complaint, State Farm sought a declaratory judgment that various liability insurance policies which State Farm had issued to the Bolts and their companies did not require State Farm to indemnify and defend the Bolts and their companies against litigation then pending in the States of Washington and Alaska against the Bolts and their companies. Jurisdiction in this Court was based on diversity of citizenship. 28 U.S.C. § 1332. Bolt appeared *pro se*, purporting to represent himself, his wife, his limited partnerships, and his corporation. He filed an answer asserting coverage under the policies, and in addition, counterclaimed in tort for bad faith and affirmatively alleged that if the policies did not provide coverage State Farm, by its conduct, had waived any coverage defense, or alternatively, was estopped to assert such defenses. State Farm moved for summary judgment on coverage. After carefully reviewing the record, the Court concluded that none of the policies provided coverage for the

specific claims being made against Bolt and his businesses and that State Farm was not aware of facts outside the pleadings that would bring those claims within the coverage of the policies. The Court therefore granted State Farm partial summary judgment. On the remaining claims--bad faith, waiver, and estoppel--State Farm requested discovery from Bolt and Bolt's companies. Bolt initially acknowledged possession and control of the matters sought but requested additional time to respond. The Court granted Bolt's request for an extension of time. Thereafter it became clear that Bolt would not make discovery and would not cooperate with reasonable case management requests from this Court. After trying lesser sanctions, the Court ultimately dismissed Bolt's counterclaims as a sanction for failure to make discovery and entered judgment against him. Since the entire record established that Bolt had engaged in a bad faith litigation strategy and had intentionally filed frivolous and vexatious pleadings for the purpose of increasing the costs of litigation to his opponent, this Court awarded attorney fees against him and his companies in accordance with Alaska law. The Court considered and rejected a request from Bolt that enforcement of the judgment against him and his companies be stayed pending appeal without the requirement of a supersedeas bond. *See* Fed. R. Civ. P. 62(d).

The Court has carefully reviewed the materials brought to my attention by Magistrate Judge Branson. First, it appears that most of them are aimed at the appellate court, not this Court. Bolt has a habit of filing pleadings in this Court meant for the appellate court. Second, Bolt is raising claims that he has previously raised and suffered adverse rulings. In fact,

many of Bolt's claims have been raised and rejected a number of prior times.

Bolt argues that he cannot be subjected to proceedings under Fed. R. Civ. P. 69 because he has filed bankruptcy and is a beneficiary of the automatic stay. The effect of the automatic stay has been thoroughly litigated in this proceeding. As to Bolt personally, the Court delayed entering any non-ministerial orders pending consideration by the Bankruptcy Court of a motion by State Farm for relief from stay. Judge MacDonald of the Bankruptcy Court, to whom Bolt's case was assigned, granted State Farm relief from the stay. Order accompanying notice at Docket No. 375. This Court thereafter ruled: 1) Bolt's companies were not protected by the automatic stay even though Bolt was their chief executive officer and general agent; and 2) Bolt personally was not protected by the stay after it was lifted. Docket No. 385 and Judgement at Docket No. 386. This Court denied motions for reconsideration of that Judgment. Docket No. 389. Bolt argues that Judge MacDonald relieved the stay *ex parte* without giving Bolt notice and an opportunity to be heard. If so, Bolt should have appealed Judge MacDonald's order either to this Court or the Bankruptcy Appellate Panel. He did not appeal Judge MacDonald's order and therefore it is binding on this Court. The fact that Judge MacDonald's order displeases Bolt is not a reason why this Court may disregard it.

Bolt argues that this Court's Order precluding him from representing his companies *pro se* denies him, and presumable them, access to the Courts and is inconsistent with Ninth Circuit precedent. He relies upon *United States v. Reeves*, 431 F.2d 1187 (9th Cir. 1970). *Reeves* is distinguishable on two

bases. First, it purported to apply Alaska law and Alaska law has developed in the interim to clearly prohibit non-lawyers from representing anyone but themselves in Court. *See, e.g., Christiansen v. Melinda*, 857 P.2d 345 (Alaska 1993). Second, *Reeves* only applied to general partnerships under the Uniform Partnership Act, not to limited partnerships or corporations, which are regulated by different statutes. Since *Reeves* was inconsistent with every other case in the country addressing *pro se* representation by non-lawyers of business associations, and inconsistent with other Ninth Circuit decisions addressing other forms of business associations, the Court concluded that the Ninth Circuit would not expand *Reeves* to address Bolt's businesses. The Court's prediction turned out to be true. The Ninth Circuit has overruled *Reeves*. *See In Re America West Airlines*, 40 F.3d 1058 (9th Cir. 1994), citing *Rowland v. California Men's Colony*, 113 S.Ct. 716, 721 (1993). Bolt may not represent is various businesses in this Court and the CLERK IS REMINDED TO RETURN ALL PAPERS TO BOLT IN WHICH HE PURPORTS TO REPRESENT ANY LIMITED PARTNERSHIP OR CORPORATION. BOLT MAY FILE PAPERS ON HIS OWN BEHALF BUT NOT ON BEHALF OF ANYONE ELSE.

Finally, Bolt argues that this Court's earlier orders are void because he was entitled to a stay of all proceedings until State Farm hired lawyers to represent him and his companies in this declaratory judgment proceeding. The Court denied any stay and directed Bolt to comply with the orders. The Court noted that there was a split of authority on a related point, whether Bolt was entitled to have his attorney's fees paid by State Farm, and concluded that when the Alaska Supreme

Court visits the issue it will adopt the view that Bolt is not entitled to have his attorney's fees prepaid or paid at all unless he prevailed. The Court indicated that it felt that this result was foreshadowed by *Alaska Pac. Assurance Co. v. Collins*, 794 P.2d 936, 948-49 & n.15 (Alaska 1990).

IT IS THEREFORE ORDERED:

Treating all of Bolt's post-judgment filings as a renewed motion for relief from judgment under *Fed. R. Civ. P.* 60, the motion is **DENIED**.

Treating Bolt's various filings as a motion for stay OF ENFORCEMENT OF THE JUDGMENT PENDING APPEAL without filing a supersedeas bond pursuant to Fed. R. Civ. P. 62(d), the motion is **DENIED**.[1] This case is referred back to Magistrate Judge Branson for further proceedings under Fed. R. Civ. P. 69.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge, by Ardel Burritt, secretary to Judge Singleton.

Date: April 4, 1995 SECRETARY'S INITIALS: ab

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1. The Court assumes that it has discretion to grant a stay without requiring a bond in an appropriate case, but this is not an appropriate case. Bolt has not shown a probability of success on the merits, nor has he raised substantial issues and established that the balancing of the hardships tilts in his favor. *See, e.g., United States v. Cheely*, 814 F.Supp 1430, 1434 (D. Alaska 1992) (discussing stays on appeal); *see also Hilton v. Braunskill*, 481 U.S. 770, 776-78 (1987); *Artukovic v. Rison*, 784 F.2d 1354, 1355 (9th Cir. 1986).

Letter from:

UNITED STATES DISTRICT COURT
for the District of Alaska
Anchorage, Alaska 99513-7564
March 29, 1995

Postmarked March 30, 1995

To: Wayne Bolt

The following documents presented by you for filing on March 29, 1995 are being returned to you pursuant to Order from Chambers Filed on February 28, 1995 at docket entry #431, copy of the order is enclosed.

1. Notice of Appeal
2. Motion for Stay of Proceedings
3. Motion for Expedited Consideration for Defendants' Motion for Stay
4. Request for Oral Argument on Defendants Motion for Recusal and Referral to the Presiding Judge
5. Motion for Expedited Consideration
6. Motion for Recusal and referral to Presiding Judge
7. Opposition to State Farm's Motinos for Telephone Deposition and Expedited Consideration & Cross-Motion to Dismiss Case for Lack of Jurisdiction & Cross-Motion for Sanctions against State Farm and State Farm's Counsel

/s/ Roy Van Hollebeke
Deputy Clerk

cc: Judge James K. Singleton
Phyllis Rhodes, Clerk of Court

Enclosures; as stated